

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

ULTIMA SERVICES CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	No. 2:20-cv-00041-DCLC-CRW
)	
U.S. DEPARTMENT OF AGRICULTURE,)	
et al.,)	
)	
Defendants.)	

MOTION TO DISMISS

Defendants the United States Department of Agriculture, the Secretary of Agriculture, Sonny Perdue, the United States Small Business Administration, and its Administrator, Jovita Carranza, hereby move the Court for an Order dismissing plaintiff's Complaint and all of the claims asserted therein. The entire Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction because plaintiff lacks standing to assert its claims. Plaintiff's claim concerning specific contracts it alleges were not extended or renewed and its request that the Court reinstate these contracts also should be dismissed pursuant to Rule 12(b)(1) because this claim is covered by the Contract Disputes Act and therefore is within the exclusive jurisdiction of the United States Court of Federal Claims and subject to administrative exhaustion requirements plaintiff has not alleged it has met.

In addition, the entire Complaint should be dismissed with prejudice pursuant to Rule 12(b)(6) because plaintiff does not sufficiently plead it actually was subjected to disparate treatment based on race and therefore the Complaint fails to state an equal protection claim.

Plaintiff's claim under 42 U.S.C. § 1981 also should be dismissed with prejudice pursuant to Rule 12(b)(6) because section 1981 does not apply to claims of discrimination against the federal government. Finally, plaintiff's claim for monetary damages pursuant to 42 U.S.C. § 1981 should be dismissed pursuant to Rule 12(b)(1) because the federal government has not waived sovereign immunity from such claims for monetary damages. In further support of this motion, defendants rely on a memorandum of law filed contemporaneously herewith. For the reasons stated therein, defendants respectfully request that the Court grant this motion and enter an Order dismissing plaintiff's Complaint and all of the claims asserted therein.

CERTIFICATION

Pursuant to the Court's Order Governing Motions to Dismiss, the parties have conferred and determined that this motion could not be avoided by the filing of an amendment.

Dated: July 10, 2020

OF COUNSEL:

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U.S. Small Business Administration

Respectfully submitted,

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By: /s/ Juliet E. Gray
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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2020, I electronically filed the above document with the Clerk of Court using the ECF System, which will send notification of such filing to all counsel of record.

/s/ Juliet E. Gray
Juliet E. Gray
Senior Trial Attorney